

**BOARD OF SUPERVISORS
FINANCE/GOVERNMENT SERVICES AND OPERATIONS
COMMITTEE**

#2

INFORMATION ITEM

SUBJECT: **Fairfax EMS Transport Fee/ Staff Research Report**

ELECTION DISTRICT: **Countywide**

BACKGROUND:

At the June 4, 2008 Finance/Government Services and Operations Committee staff provided the Committee information pertaining to the Fairfax County Department of Fire and Rescue's notification that it would begin billing for EMS ambulance transports originating within the boundaries of Loudoun County beginning July 1, 2008.

At the June 18, 2008 Finance/Government Services and Operations Committee meeting, and following discussion of the Fairfax County EMS Transport Fee Staff Research Request item, the Committee requested that the full Board of Supervisors direct staff, including the County Attorney, to perform the necessary legal research on the list of questions and pertinent issues that Supervisor Miller and the other members of the Committee raised regarding Fairfax County EMS transport fees. This recommendation was approved unanimously by the full board at the July 1, 2008 Board of Supervisors meeting.

ISSUES:

The questions and staff responses are provided as follows:

1. Can the Loudoun and Fairfax Counties' mutual aid agreement, or other basis for enforcement, be read (or altered so as to read) in such a way that permits Fairfax to bill only beneficiaries of Medicare Part B?

Staff Response: The current "Northern Virginia Emergency Services Mutual Response Agreement" is silent in terms of billing. It does address costs for services between the signatory jurisdictions, stating that no jurisdiction shall be indebted to another for the cost of usual emergency services rendered pursuant to the agreement. It does not address direct billing to patients or their insurance companies for services performed by a jurisdiction. Please see Paragraph VI in attachment 2.

Medicare Part B is an insurance program and recipients pay a premium for coverage, including a deductible. With regard to billing only patients who have Medicare Part B, it is important to keep in mind that those eligible for this insurance are individuals aged 65, disabled or with end stage renal disease. Billing Medicare Part B recipients would be no different from billing individuals who have other types of health insurance. The Fairfax program bills all insurance companies, whether private or government-sponsored. It appears that under Federal law, Fairfax is not permitted to waive co-payments for ambulance services provided to non-Fairfax County residents (a political subdivision is expressly permitted to waive Medicare co-pays for services provided directly to its own residents) and thus billing Medicare Part B patients will require that the co-pay and any remaining deductible be paid by the recipient of the services.

2. Regardless of who is ultimately subjected to billing from Fairfax County, can Loudoun County find any basis upon which to call upon the government of Fairfax County, as an independent agency distinct from Fairfax EMS (or in any other capacity) to reimburse Loudoun, thereby allowing Loudoun to reimburse its residents who are billed by Fairfax EMS?

Staff response: Staff cannot determine a mechanism that will enable reimbursement for Loudoun residents. Fairfax Fire and Rescue is a department of the Fairfax County government and does not act independent from the County with regard to EMS billing. Fairfax Fire and Rescue acts as an agent of the Fairfax County government when it bills for EMS transport service. Further, the EMS transport billing fee assessed to patients transported by Fairfax Fire and Rescue is a function of that department's relationship with the patient, and is generally directed to the patient's insurance company. Loudoun County does not have a role in the EMS billing assessed by Fairfax Fire and Rescue and would not have access to patient billing information for the purpose of reimbursement; the individual transported by Fairfax would not be a patient of Loudoun Fire, Rescue and Emergency Management, and therefore privacy laws would likely prevent patient information from being shared with Loudoun.

3. If anyone in Loudoun must be billed for transport from within Loudoun by Fairfax County EMS under a federal mandate "that all patients must be treated equally with regard to billing," can it be viably argued that the entity under that mandate's control is the combined EMS systems of the two counties when any of those systems' apparatus are acting under the mutual aid agreement; so as to say that when Fairfax EMS enters Loudoun, it must bill in the same way that Loudoun EMS bills when it enters Fairfax, requiring that either both Fairfax's and Loudoun's EMS each bill the other county's residents, or else that neither bills the other county's residents.

Staff Response: Staff does not believe the current mutual aid agreement can or does require a member jurisdiction to follow any practice or procedure of another jurisdiction with regard to EMS billing. Loudoun County is currently operating under the August 2004 edition of the *Northern Virginia Emergency Services Mutual Response* memorandum of agreement. The authority for this agreement is made in accordance with

Title 27. Chapter 1, Sections 27-1, 27-2, 27-3 and 27-4 of the Code of Virginia as amended and 42 USC, Section 1856a, which does not specifically cite an allowable practice for EMS billing or the like as described in the question. Additionally, the existence of a Mutual Aid agreement does not create a new entity; that would need to be authorized by the General Assembly. The Mutual Aid agreement sets forth how each jurisdiction, or separate political subdivision, will assist its neighboring political subdivision when called upon for services, but those entities remain distinct.

4. Does the mutual aid agreement create a legally cognizable entity distinct from both the county of Fairfax and the county of Loudoun, for purposes of complying with the obligation, "that all patients must be treated equally with regard to billing"?

Staff Response: Please see the staff response to #3 above.

ATTACHMENT(S):

Attachment 1: July 1, 2008 Board of Supervisors Action Item on Finance/Government Services & Operations Committee Report: Finance/Government Services & Operations Committee

Attachment 2: April 2004, Northern Virginia Emergency Services Mutual Response, Mutual Response Agreement.

STAFF CONTACT(S):

Chief Joseph Pozzo, Department of Fire, Rescue and Emergency Management
Milissa Spring, Deputy County Attorney

Date of Meeting: July 1, 2008

BOARD OF SUPERVISORS

#6

ACTION ITEM

SUBJECT: **Finance/Government Services and Operations
Committee Report: Fairfax EMS Transport Fee
Staff Research Request**

ELECTORAL DISTRICTS: **Countywide**

CRITICAL ACTION DATE: **July 1, 2008**

COMMITTEE: At the June 18, 2008 Finance/Government Services and Operations Committee meeting, and following discussion of the Fairfax County EMS Transport Fee Staff Research Request item, the Committee requests that the full Board of Supervisors direct staff, including the County Attorney, to perform the necessary legal research on the list of questions and pertinent issues that Supervisor Miller and other members of the Committee has raised regarding Fairfax County EMS transport fees. The information requested will be reported to the Finance/Government Services and Operations Committee at a future meeting.

BACKGROUND:

At the June 4th Finance/Government Services and Operations Committee meeting, Department of Fire, Rescue and Emergency Management Chief Joseph Pozzo presented an information item informing the Committee that he had been notified by Fairfax County's Department of Fire and Rescue of its intention to impose, for the first time, an emergency medical services transport fee to any Loudoun County resident transported by that locality's emergency medical service (EMS) service beginning July 1, 2008 (See Attachment).

Since that meeting, Supervisor Miller, a member of both the Finance/Government Services and Public Safety and Human Services Committees has performed some preliminary research on his own with regard to medical billing and the federal regulations that provide for part of its governance. In performing such research, Supervisor Miller has raised a number of questions pertaining to the legal nature of this new fee that will be levied by the Fairfax County Department of Fire-Rescue on Loudoun residents beginning July 1, 2008.

ISSUES:

In performing his preliminary research on the federal rules and regulations governing medical billing practices and procedures, specifically Medicare, Supervisor Miller believes

that the information item and the rationale provided to Loudoun County from Fairfax County Fire-Rescue deserves more rigor and investigation. According to the memorandum accompanying that information item, Fairfax County feels compelled to make this change because, "Fairfax County Fire and Rescue Department is concerned that failure to bill all patients equally will subject it to a negative finding in a federal audit. The federal agency that oversees Medicare (Centers for Medicare and Medical Services) requires that all patients must be treated equally with regard to billing." Supervisor Miller based upon his preliminary research believes that this may not be entirely factual.

As a result, Supervisor Miller and Committee members request that the Board of Supervisors direct staff, including the County Attorney, to research the following questions and issues:

1. Can the Loudoun and Fairfax Counties' mutual aid agreement, or other basis for enforcement, be read (or altered so as to read) in such a way that permits Fairfax to bill only beneficiaries of Medicare Part B?
2. Regardless of who is ultimately subjected to billing from Fairfax County, can Loudoun County find any basis upon which to call upon the government of Fairfax county, as an independent agency distinct from Fairfax EMS (or in any other capacity) to reimburse Loudoun, thereby allowing Loudoun to reimburse its residents who are billed by Fairfax EMS?
3. If anyone in Loudoun must be billed for transport from within Loudoun by Fairfax County EMS under a federal mandate "that all patients must be treated equally with regard to billing," can it be viably argued that the entity under that mandate's control is the combined EMS systems of the two counties when any of those systems' apparatus are acting under the mutual aid agreement; so as to say that when Fairfax EMS enters Loudoun, it must bill in the same way that Loudoun EMS bills when it enters Fairfax, requiring that either both Fairfax's and Loudoun's EMS each bill the other county's residents, or else that neither bills the other county's residents.
4. Does the mutual aid agreement create a legally cognizable entity distinct from both the county of Fairfax and the county of Loudoun, for purposes of complying with the obligation, "that all patients must be treated equally with regard to billing"?

Supervisor Miller further requests that the full Board of Supervisors direct staff including the County Attorney to investigate federal law for the purpose of verifying the existence of any mandate to the effect, "that all patients must be treated equally with regard to billing," and, if such mandate actually does exist, to direct staff, including the County Attorney, to research and propose a legislative mechanism that will continue to allow Fairfax County EMS to transport Loudoun residents for the same fees that Loudoun's Combined System EMS transports them which is free of charge. Committee members have also requested that staff research the impact that EMS billing may have on volunteer fire and EMS private contributions in jurisdictions where EMS billing occurs. Additionally Committee members

request that staff research how EMS billing is included in health insurance policies, and the impact that EMS billing may have on health insurance policy premiums.

Other Localities Bill Loudoun Residents.—It is important to note that staff confirmed that other neighboring localities currently bill Loudoun County residents for EMS transports. These include Frederick County, MD and Fauquier County, VA. However, these localities have smaller numbers of EMS transports than Fairfax County Fire-Rescue has within the borders of Loudoun County. If staff, including the County Attorney, is directed to perform this research, the Committee's request is to include any other neighboring locality that bills Loudoun for EMS transports.

ALTERNATIVES:

1. The full Board of Supervisors may not wish to direct staff, including the County Attorney, to perform this research at this time.
2. The full Board of Supervisors may wish to modify the list of questions and/or the type of research to be performed by staff, including the County Attorney.

FISCAL IMPACT:

There is no direct fiscal impact for staff, including the County Attorney, for researching these legal questions. However, this research will require staff time and effort apart from other legal matters and duties.

DRAFT MOTIONS:

I move the request of the Finance/Government Services and Operations Committee that the Board of Supervisors direct staff, including the County Attorney, to perform the necessary legal research on the list of questions and pertinent issues that Supervisor Miller and other members of the Committee has raised regarding Fairfax County EMS transport fees. The information requested will be reported to the Finance/Government Services and Operations Committee at a future meeting.

-or-

I move an alternative motion.

ATTACHMENTS

Attachment.—June 4, 2008 Finance/Government Services & Operations Committee Information Item on Fairfax EMS Transport Fee

STAFF CONTACT:

Chief Joseph Pozzo, Department of Fire, Rescue and Emergency Management

**NORTHERN VIRGINIA
EMERGENCY SERVICES**

MUTUAL RESPONSE AGREEMENT

CITY OF ALEXANDRIA

CITY OF FAIRFAX

COUNTY OF ARLINGTON

COUNTY OF LOUDOUN

COUNTY OF FAIRFAX

FORT BELVOIR

METROPOLITAN WASHINGTON

AIRPORTS AUTHORITY

April 2004

NORTHERN VIRGINIA EMERGENCY SERVICES MUTUAL RESPONSE

MEMORANDUM OF AGREEMENT

I. Purpose

This Memorandum of Agreement, hereafter known as the NOVA Agreement, is intended to update and reaffirm the provisions of the original emergency services Memorandum of Understanding, which was agreed to and signed by the parties on December 12, 1975.

II. Background

For more than 20 years, the Fire and Rescue Departments of the Northern Virginia region have displayed an unprecedented level of cooperation in providing emergency services to the citizens of our collective Northern Virginia community. The provisions of the original Memorandum of Understanding created a framework that has allowed our citizens to enjoy the benefits of a regional approach to the delivery of emergency services, using response procedures that are unencumbered by the boundaries of our respective political subdivisions. This system of automatic mutual response has proven to be invaluable, and this update is intended to perpetuate and strengthen this method of emergency service delivery within the region.

III. Parties To This Agreement:

This NOVA Agreement is made for the purpose of continuing the mutual exchange of emergency services between the Fire, Rescue, and Emergency Medical Service agencies of the following Northern Virginia jurisdictions:

Arlington County, Virginia (Includes City of Falls Church)

City of Alexandria, Virginia

City of Fairfax, Virginia

Fairfax County, Virginia (Includes Towns of Clifton, Herndon, and Vienna)

United States Army Base - Fort Belvoir

Metropolitan Washington Airports Authority

Loudoun County, Virginia

The Chief of Fire & Rescue of each jurisdiction shall serve as the signatories to this agreement.

IV. Authority

This agreement is made in accordance with the provisions of Title 27, Chapter 1, Sections 27-1, 27-2, 27-3 and 27-4 of the 1954 Code of Virginia, as amended and 42 USC, Section 1856a.

V. Proviso:

The parties to this NOVA Agreement concur with the following provisions specific to the exchange of mutual response emergency services:

A. For the purpose of this agreement, the Northern Virginia region the entire geographic land area within the political subdivisions of Arlington County, City of Alexandria, City of Fairfax, City of Falls Church, Fairfax County, Fort Belvoir military base, Metropolitan Washington Airports Authority and Loudoun County.

B. Emergency Services shall mean Fire Suppression, Emergency Medical, Hazardous Material, Technical Rescue, and/or other disaster related types of emergency services. Other services not specifically named in this section may also be exchanged if mutually agreed upon by the parties to this agreement.

C. Each party agrees to participate in a mutual response system that, when needed, will automatically dispatch the most appropriate response resource(s) available, to an incident location, without regard to jurisdictional boundary lines.

D. Each party to this agreement shall retain primary responsibility for determining the most appropriate response resources to be utilized within its jurisdiction. For service in geographic areas where mutual response is desirable, the responsible jurisdiction shall confer with the other jurisdiction(s) affected prior to implementing mutual response programming.

E. Each party's Public Safety Communication Center shall maintain direct links to the other communication centers within the Northern Virginia region. These communication centers shall serve as the primary source for a mutual response request. Requests for mutual response may be made by telephone, radio, or via computer network. Each Communication Center shall also maintain records and reports of mutual response incidents, using their established procedures. Records, reports, and information concerning mutual response incidents shall be provided to the parties to this agreement, when requested through the appropriate method.

F. All tactical units and personnel responding to a mutual response incident shall operate in accordance with the Incident Command System. Incidents will be under the command of the first arriving officer on scene, regardless of jurisdiction, until command is assumed by an officer of appropriate rank from the jurisdiction in which the incident is located.

G. Each party shall participate in the development of operational guidelines to be used during mutual response incidents. These guidelines shall cover such areas as dispatch procedures, communications, apparatus response, tactical operations, medical control, EMS protocols, incident command, and incident reporting.

These operational guidelines shall be reviewed by the NOVA Operations Chiefs at least annually and updated as necessary.

VI. Cost for Services

In general, a party to this agreement shall not be indebted to another party for the cost of any usual and customary emergency services rendered by that other party in accordance with the terms and conditions of this agreement. However, in the event of a specific incident where the responsible jurisdiction may be able to recover costs of mitigating a specific incident, the costs incurred by an assisting jurisdiction may be reimbursed to that jurisdiction if said costs are recovered from the party legally responsible for causing the incident.

VII. Indemnity

A. All services performed and expenditures made under this agreement shall be deemed for public and governmental purposes and all immunities from liability enjoyed by federal, state and local governments within its boundaries shall extend to its participation in rendering emergency services, in accordance with this agreement, outside of its boundaries.

B. Each party to this agreement shall waive any and all claims against all the other parties hereto, which may arise out of their activities outside their respective jurisdictions while rendering assistance under this agreement.

C. In providing for the exchange of Emergency Medical Services, each party agrees to acknowledge and accept the use of the pre-hospital medical protocols, procedures, and standards of care regularly employed by another party's EMS agency for use by said agency when providing patient care during a mutual response incident.

D. This NOVA Agreement is intended to work in concert with any other existing agreement(s) between the parties, which address issues relating to cooperation of emergency service agencies. Should the terms of this agreement conflict with similar provisions of another existing agreement between any of the parties, said parties agree to meet and confer to resolve the conflict between the agreements in question.

VIII. Modification and Termination of Agreement

A. This agreement may be modified at any time the parties deem it necessary. Suggested modifications to this agreement shall be developed in writing and distributed to each party for their review and comment. A modification to this agreement is approved or rejected by mutual consensus of the NOVA Fire Chiefs.

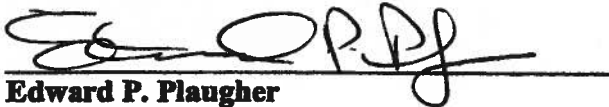
B. Any party may terminate their participation in this agreement by submitting written notice of their withdrawal to the other parties. A termination notice shall be provided at least 90 days in advance of the effective date of such termination to provide time for any adjustments in response procedures that may be necessary.

IX. Date of Effectiveness

The terms and conditions of this agreement shall become effective on the date that the representatives of each jurisdiction sign this agreement. The provisions of this agreement shall remain in full force and effect until such time that this agreement is modified or terminated by the parties.

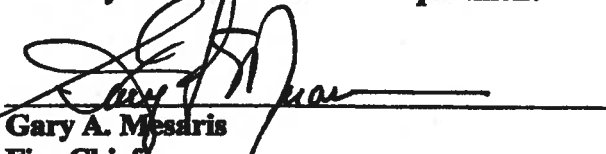
X. Signatures

For Arlington County Fire Department


Edward P. Plaugher
Fire Chief

Dated 4.28.04

For City of Alexandria Fire Department


Gary A. Mesaris
Fire Chief


Dated April 27, 2004

For the City of Fairfax Fire Department


Thomas W. Owens
Fire Chief

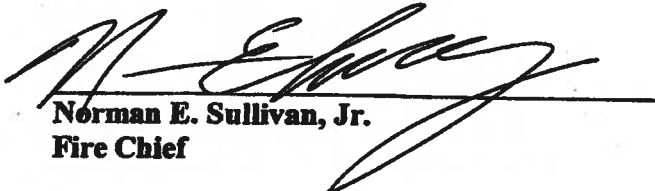
Dated April 27, 2004

For Fairfax County Fire and Rescue Department


Michael Neuhard
Fire Chief

Dated 4-30-04

For Ft. Belvoir Fire Department


Norman E. Sullivan, Jr.
Fire Chief

Dated April 28, 2004

For Metropolitan Washington Airports Authority


Steve Cooper
Fire Chief

Dated April 27, 2004

For Loudoun County Department of Fire Rescue


Robert P. Griffin Jr.
Fire Chief

Dated April 20, 2004